***United States Court of Appeals***

***for the Second Circuit***


# BRIEF FOR APPELLANT

# 74-2120

ORIGINAL

*To be argued by*
ALFRED S. JULIEN

In The

## United States Court of Appeals

For The Second Circuit

UNITED STATES COURT OF APPEALS
NOV 4 1974
SECOND CIRCUIT

DORMAN L. BAIRD and DORIS J. BURNS, as Administratrix of the Goods, Chattels and Credits which were of WENDEL M. BURNS, deceased, and DORIS J. BURNS, individually,

*Plaintiffs-Appellants,*

- against -

DAY & ZIMMERMAN, INC., REVERE COPPER & BRASS, INC., and LEAR SIEGLER CO. INC.,

*Defendants,*

- and -

HARVEY ALUMINUM (Incorporated),

*Defendant-Appellee.*

*On Appeal from the United States District Court for the Southern District of New York.*

# BRIEF FOR PLAINTIFFS-APPELLANTS

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INDEX

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES CONTINUED



STATUTE

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No. 74-2120

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HARVEY ALUMINUM (Incorporated),

Defendant-Appellee.

# PLAINTIFFS-APPELLANTS' BRIEF

## Statement of the Issues Presented for Review

Whether a foreign corporation is doing sufficient business within the State of New York to be subjected to New York's

jurisdiction,

A. where its wholly owned subsidiary was doing business in New York soliciting orders for the corporation's product resulting in multi-million-dollar sales of that product in New York and performing other services for the corporation in connection with the sale of its product and

B. where the foreign corporation itself came into New York in connection with its own financial transactions and

C. where the foreign corporation obtained extensive management services from its New York parent who was doing business in New York, and its officers came into the state in connection with those services.

## STATEMENT OF THE CASE

### Nature of the Case

This is an appeal from a judgment dismissing this action with respect to defendant Harvey Aluminum (Incorporated), (hereinafter referred to as Aluminum). This action arose out of an occurrence in Vietman where, as a result of the explosion of an artillery gun, plaintiff Baird was injured and decedent Burns killed. At the time Baird and Burns were soldiers in the U.S. Army.

Plaintiffs began this action in the court below against the defendant corporations who manufactured the explosive, fuze and components which allegedly caused the occurrence. Diversity jurisdiction was asserted.

Aluminum moved to dismiss the action on the grounds that it was not doing business in New York as defined by New York State law sufficient to support jurisdiction. After holding a hearing where testimony and documentary evidence was introduced, the court below granted Aluminum's motion. Pursuant to Rule 54 (b) FRCP, the Court on July 30, 1974, entered a final judgment

dismissing the action with respect to Aluminum. This appeal is from that judgment.

Statement of Facts

This is an appeal from a judgment dismissing the complaint with respect to defendant, Harvey Aluminum (Incorporated), (hereinafter called Aluminum) 1/ on the ground that Aluminum was not doing sufficient business within New York to form a basis for jurisdiction.

On September 6, 1969 an artillery gun exploded in Vietnam. Plaintiff, Dorman L. Baird, was injured and decedent Wendell K. Burns killed as a result of this explosion. Baird and Burns at the time were serving in the United States Army. (JA69-70)

This action is against the defendant corporations who manufactured the explosive, the fuze and their components used in the artillery gun. Plaintiff Baird is a resident of Alabama, and plaintiff Doris Burns, decedent's wife and administratrix, is a resident of the State of Washington. The action was brought in New York

1/ Harvey Aluminum (Incorporated) is now called Martin Marietta Aluminum (Incorporated).

because only here did the plaintiffs believe they would be able to get jurisdiction over all of the corporate defendants.(JA23) Aluminum was served on July 21, 1971 in California. (JA16)

Aluminum moved in the District Court to dismiss the action on the grounds that it was not doing business within New York. Following receipt of papers for and against the motion, the court ordered a hearing at which testimony and documentary evidence on that issue was introduced.

These facts were established:

Aluminum is a company which manufactures and sells aluminum and aluminum products and other metals. (JA65) Aluminum, through its wholly owned subsidiary, Harvey Aluminum Sales, Inc. (hereinafter referred to as Sales), 2/ operates a U.S. Government ordnance plant in Tennessee where fuzes such as the one alleged to have contributed to the occurrence which is the subject of this case, were assembled. (JA65) Aluminum, itself, is

2/ Harvey Aluminum Sales, Inc. is now called Martin Marietta Aluminum Sales, Inc.

a subsidiary of the Martin Marietta Corporation, (hereinafter referred to as Corporation). At the time the action was begun, Corporation owned 82.7% of Aluminum's outstanding shares. (JA66)

There is a close interrelationship among those companies as indicated by financial reports filed by Aluminum and Corporation. In an Aluminum Registration Statement filed during 1971 (Plaintiff's Exhibit 3 in evidence), the following appears:

> " In addition the Company manages a United States Government Ordnance plant at Milan, Tennessee" . . . . The term "Company" includes subsidiaries unless the context otherwise requires. " (JA65)

The financial statements included in that document lump together the financial information from Aluminum, Sales and other Aluminum subsidiaries. (See e.g. Plaintiff's Exhibit 3, in evidence, p. 32 et. seq.)

In Corporation's 10-K Report for the year ended 1971, (Plaintiff's Exhibit 20, in evidence), the following appears:

> " Martin Marietta is engaged in the business of producing primary aluminum and aluminum mill products, through its ownership of approximately 82.7% of the outstanding common stock of Harvey Aluminum (Incorporated)" (JA67)

In 1971 and earlier, Aluminum had no office in New York. Sales during that period had two offices within New York. One office in Jericho and then in Queens, New York, was in existence in 1971 and before then. (JA39) The Queens office had one manager, four salesmen and one secretary. (JA54) Sales was authorized to do business in New York (JA40) Corporation during 1971 and earlier had its executive offices on Park Avenue in New York City (JA66)

Sales sold Aluminum's aluminum products pursuant to a contract between itself and Aluminum. (JA68) That contract, which designated Sales Aluminum's "sales agent", provided in part:

> "1. The territory to be covered by (Sales) shall be throughout the United States of America and in such other and additional areas as (Aluminum) may designate.
>
> 2. (Sales) shall use its best efforts to sell and promote the products of (Aluminum) and said agency shall include aluminum, aluminum products and other products of (Aluminum). (Sales) in further consideration agrees to provide technical, engineering and liaison service between customers of (Aluminum) on any of its aluminum products or other products of (Aluminum).

* * *

4. (Sales) shall not handle any products which are competitive to the products of(Aluminum) without the consent of (Aluminum).

* * *

The contract further provided that Sales would get a commission on the total amount sold by it for Aluminum. (JA68)

There was testimony from Mr. Guthrie, a Sales officer, that Sales did not sell aluminum products manufactured by companies other than Aluminum during 1971 and that Sales was a "sales arm" of Aluminum for aluminum products which would be about 80% of the total products of Aluminum. (JA37-9) Mr. Guthrie also testified that under the contract Sales not only sold aluminum,

but also "acted as a liaison between the manufacturing plants of Aluminum and the ultimate customers of the aluminum products manufactured in those plants." (JA33)

In 1971, Sales' two New York offices generated about $4,000,000.00 of sales shipped into New York. 3/ The total of Aluminum Shipments into New York during 1971 was roughly $11,000,000.00 (JA52)

Sales used a Harvey Aluminum insignia on its literature./ (JA57) There was an advertisement in a New York telephone book during 1970 under the name of Harvey Aluminum. (JA25)

Aluminum itself did business in New York during 1971. It offered for sale $50,000,000.00 in debentures and over $1,000,000. in shares of its common stock. Before these offerings could be made, Aluminum had to fulfill certain legal requirements including the preparation and filing of a registration statement with the Securities Exchange Commission.

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3/ This figure is calculated from the testimony to the effect that the New York offices generated $97,000. or $98,000. in commission income which would be 2-1/4% of the shipment figures. (JA36)

(Plaintiffs' Exhibit 3 in evidence). In connection with the preparation of this document, Aluminum used the law firm of Dewey, Ballantine, Bushby, Palmer & Wood which is located in New York City. (Plaintiffs' Exhibit 3, in evidence, P. 28). There was no specific evidence indicating that Aluminum's officials came into New York to consult with members of this law firm, but the court can practically take judicial notice that such visits to New York for that purpose must have taken place. Preparation of such offerings is a complex task. It would require personal consultation between members of the Dewey, Ballantine New York law firm and officers of Aluminum.

Finally, Aluminum obtains various corporate services including general management, financial, industrial relations and other administrative services from Corporation. During the fiscal year 1970 Aluminum paid Corporation about $232,500. (JA72) and during 1971 about $1,330,000. for those services.(JA18) In connection with such services, Aluminum employees during 1971 and earlier undoubtedly came into

New York to consult with Corporation executives at the Park Avenue headquarters on numerous occasions. While there was no specific evidence of these meetings, there was evidence that in 1972 and 1973 Aluminum employees did come into New York for this purpose. (JA47)

The court below granted Aluminum's application to dismiss the complaint. The court held that Aluminum itself was not engaged in any activities in New York from which doing business could be inferred. The substantial sales by Aluminum to customers within New York were not sufficient by themselves to support the conclusion that Aluminum was doing business in New York. (JA72) The activities of Sales, Aluminum's wholly owned subsidiary were not chargeable to Aluminum because the court held that Sales was an independent contractor without authority to bind Aluminum in any way. (JA71) Finally the court rejected as significant the management fees paid by Aluminum to Corporation stating that Corporation's activities would not subject Aluminum to New York's jurisdiction in the absence of control of

Aluminum by Corporation. The court found that no control had been shown. (JA73)

Pursuant to Rule 54 (b) FRCP final judgment was entered dismissing the complaint with respect to Aluminum. This appeal is from that judgment.

## ARGUMENT

ALUMINUM'S ACTIVITIES IN USING A WHOLLY OWNED SUBSIDIARY DOING BUSINESS IN NEW YORK TO SOLICIT ABOUT $4,000,000. IN SALES SHIPPED INTO NEW YORK DURING THE RELEVANT YEAR AND TO PERFORM OTHER SERVICES IN THE STATE, IN REGULARLY OBTAINING MANAGEMENT SERVICES FROM ITS PARENT WITHIN NEW YORK AND IN COMING INTO THE STATE FOR THAT PURPOSE AND IN CONNECTION WITH A PUBLIC OFFERING OF SECURITIES ARE SUFFICIENT TO HOLD ALUMINUM TO BE DOING BUSINESS FOR PURPOSES OF JURISDICTION.

Aluminum is doing sufficient business in New York through its own activities and those of its subsidiary and parent companies to support New York's jurisdiction over it. 4/

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4/ Since Federal jurisdiction in this case is based on diversity of citizenship, New York State law applies. (Beja v. Jahangiri, 453 F 2d 959, 960 (2d Cir. 1972) ). Under New York law with respect to causes of action not arising in New York, a "doing business test" is applied to determine jurisdiction (NYCPLR Sec. 301) and the cases thereunder).

As stated in Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 268 (1917):

> "But there is no precise test of the nature or extent of the business that must be done. All that is requisite is that enough be done to enable us to say that the corporation is here."

As described in detail below, it is hard to think of Aluminum as not being "here". About $4,000,000. in orders generated by its wholly owned subsidiary who was doing business in New York were shipped into the State. That subsidiary performed "liaison services" within New York for Aluminum, in addition to soliciting orders. Aluminum executives regularly came into New York for the purpose of receiving management services from Aluminum's parent who was doing business in New York.

Aluminum executives also undoubtedly came to New York during 1971 to consult with Aluminum's New York law firm in connection with a public offering of securities.

All of these activities in New York amount to Aluminum's being "here" and subject to New York's

jurisdiction.

Aluminum is subject to New York's jurisdiction through the activities of Sales, its wholly owned subsidiary.

Sales itself was quite definitely doing business in New York. It was authorized to do business and had two offices employing several people within the State during the relevant period.

Under New York law a corporation which is authorized to do business is considered to be "doing business" for purposes of jurisdiction. (See Section 1314 (b) (5) BCL) Thus, in Robfogel Mill-Andrews Corp. v. Cupples Co., Mfrs. 67 Misc. 2nd 623, 323 N.Y.S. 2nd 381 (Sup Ct. 1971), the court held that a foreign corporation which had filed a certificate of authority in New York was subject to New York's jurisdiction in spite of the fact that it was not otherwise doing business in New York.

In any event, even if the mere filing of a certificate of authority were not considered sufficient for jurisdiction, that coupled with Sales' other activities in New York would, together, by any standard, be

considered doing business.

Aluminum through Sales engaged in more than mere solicitation of orders in New York. Sales was authorized to do business in New York, had two New York offices, provided technical and liaison services for Aluminum's customers, and generated about $4,000,000. in orders shipped into the State.

Thus, Aluminum was engaged in more activities within New York than the defendant in Bryant v. Finnish National Airlines, 15 N.Y. 2nd 426 (1965). The Bryant defendant was held to be doing business in spite of the fact that defendant, which was an airline, had no flights into or out of New York, had not qualified to do business in New York, and had no stockholders, directors, or officers who were United States citizens or residents of New York. The occurrence which was the subject of the Bryant case took place in Paris. The only thing the Bryant defendant did in New York was to have a small office with a few people working there whose principal function was to receive reservations for space on defendant's airline to be transmitted to defendant in Europe. None of the New York employees

could confirm a reservation.

The main distinction between our case and Bryant is that Aluminum is doing business through a wholly-owned subsidiary.

However, where a corporation is doing business through an agent in New York, New York can assert jurisdiction over it (Berner v. United Air Lines, 3 A.D. 2d 9, 157 N.Y.S. 2d 884 (1st Dep't), affd 3 N.Y. 2d 1003; Frummer v. Hilton Hotels Internat'l, Inc., 19 N.Y. 2d 533 (1967)).

A subsidiary is inferentially the agent of the parent. (Delagi v. Volkswagenwerk AG of Wolfsburg, 29 N.Y. 2d 426 (1972); Frummer v. Hilton Hotels Internat'l, supra.) In our case, furthermore, we have an agency agreement between Aluminum and Sales. An examination of this document shows the agency to be a broad one. Sales, which in the agreement is designated a "sales agent," is given the whole United States as its territory. Sales is to sell and promote Aluminum's products. Sales is to provide technical, engineering and liaison service for Aluminum's customers. Sales is not to handle competitive products without consent. (JA68)

The evidence before the Court below is consistent with the conclusion that Sales was Aluminum's agent. In

1971 Sales did not sell competitors' products. (JA37) There was no evidence that Sales at any point in the past sold competitors' products. Sales' witness admitted that Sales was Aluminum's "sales arm." (JA37-8)

The similarity in names between Harvey Aluminum (Incorporated) and Harvey Aluminum Sales, Inc. also indicates that Sales was set up to do Aluminum's sales business. (See Sunrise Toyota, Ltd. v. Toyota Motor Co., 55 F.R.D. 519, 530 (S.D.N.Y. 1972).)

Thus Sales was acting as Aluminum's agent, doing everything one might expect Aluminum's own employees to do and nothing inconsistent with what Aluminum's own employees would do. Consequently, Sales' activities within New York should subject Aluminum to New York jurisdiction. The opposite conclusion would mean that a company with a substantial interstate business could insulate itself from New York's and other states' jurisdiction by the expediency of setting up a "sales corporation."

New York courts require less activity on the part of a subsidiary within the state to subject the parent to jurisdiction than on the part of a company alleged to be the agent of a foreign corporation where no parent-

subsidiary relationship exists. Thus, factually, Frummer v. Hilton Hotels Internat'l, Inc., 19 N.Y. 2d 533 (1967) (where jurisdiction was allowed) and Miller v. Surf Properties, 4 N.Y. 2d 475 (1958) (where jurisdiction was denied) are similar. In both the "agent" present in New York represented not only the foreign corporation's hotel but hotels owned by others. 5/ In both there was a New York office with New York employees. In both the New York entity did publicity work for the foreign corporation's hotel. One difference was that in Frummer, the New York entity could confirm reservations, while in Miller it could not. But the ability to confirm reservation was not the significantly distinguishing factor; rather, the significantly distinguishing factor was that in Frummer the New York entity had a corporate relationship with the foreign defendant while in Miller there was no such relationship. The Frummer Court specifically pointed out the significance of a corporate relationship to jurisdiction when it stated,

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5/ With respect to Frummer, this fact is made clear in Delagi, supra, 29 N.Y. 2d at 431, n.3.

> "... we found it significant that in the Miller case the New York activities were carried on 'not (by) an employee of the defendant (Florida hotel) but an independent travel agency representing defendant in New York City.' Although, in the case before us, the Hilton Reservation Service is not the "employee" of Hilton (U.K.), the Service and that defendant are owned in common by the other defendants..." (19 N.Y. 2d at 538.)

That whether reservations are confirmed or orders accepted in New York is not of ultimate significance is shown by Tauza v. Susquehanna Coal Co., 220 N.Y. 259 (1917) and International Shoe Co. v. State of Washington, 326 U.S. 310 (1945) where defendants' employees in the state did not accept orders, but nonetheless jurisdiction was obtained over the out-of-state defendants.

The significance of the defendants' presence through a subsidiary for purposes of obtaining jurisdiction was noted in Boryk v. de Havilland Aircraft Co. Ltd., 341 F 2d 666 (2d Cir. 1965). There, the Court stated that with respect to determining whether a foreign corporation is doing business in New York under New York law, it is becoming increasingly unimportant whether the corporation is conducting activities in New York itself or through a subsidiary, even a subsidiary whose independence has been scrupulously preserved.

Delagi v. Volkswagenwerk AG of Wolfsburg, 29 N.Y. 2d 426 (1972), relied upon by the Court below (JA72) is distinguishable. There the foreign defendant manufactured autos in Germany. It had never qualified to do business in New York and had no place of business there. The foreign defendant exported its autos through a New Jersey corporation which was a wholly owned subsidiary of the foreign defendant. The New Jersey corporation had never qualified to do business in New York and had no office or place of business there. The cars were shipped to the United States, but none arrived at any New York port. Eventually, some of the cars reached New York through a wholesaler who was franchized by the New Jersey corporation, and whose entire capital stock was owned by investors unrelated either to the German corporation or the New Jersey corporation. The Court held there were no facts from which it could be inferred that the New York wholesaler was an agent of the foreign defendant. There was no parent-subsidiary or other corporate relationship. There was no agency agreement. The New York wholesaler in fact had no agreement at all with the foreign corporation; only the New Jersey corporation

had a "distributor agreement" with the foreign defendant.

By contrast, in our case there is a parent-subsidiary relationship and an agency agreement. In Delagi the foreign company was removed from activities in New York since it dealt with a New Jersey company who in turn dealt with the New York wholesaler. In our case Aluminum dealt directly with Sales, a company doing business in New York, and shipped its products directly into New York.

In determining whether Aluminum is doing business in New York we believe that this Court should take a liberal approach consistent with the position expressed by this Court in Beja v. Jahangiri, 453 F. 2d 959 (Second Cir. 1972). The Court there stated:

> "The New York Court of Appeals has, in general, taken a liberal view toward finding that foreign corporations are doing business within the state, and a number of its opinions have indicated that the 'doing business' standard is practically equivalent to the most permissible one that the Constitution will allow. Due process requires only that a foreign corporation 'have certain minimum contacts with (the state) such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."' The test is a qualitative, rather than a quantitative one. It is of scant value to attempt to

> measure whether the corporation could have done 'a little more or a little less' within the state, International Shoe Co. . Washington, 326 U.S. 310, 316, 319, 66 S.Ct. 154, 158, 159, 90 L.Ed. 95 (1945). A number of recent New York Court of Appeals decisions imply that this test is synonymous with the dimensions of the New York 'doing business' test."

(453 F. 2d at 961; Citations omitted.)

In Beja the Court held an insurance company to be doing business in New York on the bare facts that the company was licensed to do business in New York and had a New York agent which had no authority to write insurance for the defendant but during the one year that figures were available wrote a little over $15,000.00 worth of insurance.

Aluminum's own activities in New York in 1971, when added to the activities of its subsidiary, would be sufficient to subject Aluminum to jurisdiction even if the activities of the subsidiary itself were not sufficient.

Those activities involved preparing a public offering of common stock and debentures. Aluminum's counsel for that offering was the New York law firm of

Dewey, Ballantine, Bushby, Palmer & Wood. While there was no evidence in the Court below of visits by Aluminum executives to this law firm in connection with these securities offerings during 1971, it is inconceivable that Aluminum's executives would not have had to personally consult their lawyers during 1971 in connection with this public offering. In Elish v. St. Louis Southwestern Railroad Co., 305 N.Y. 267 (1953), the Court found as significant the fact that the defendant railroad conducted business transactions which related to its financial structure at its New York office. This business seemed to, according to the opinion, consist mainly of receiving tenders of certain of its bonds by mail at this office and the holding of one meeting of the defendant's Board of Directors in New York.

The Elish Court found very significant the fact that the railroad was conducting a small amount of business of an executive nature in New York. Implied by the Elish Court is that a smaller quantity of executive business is necessary to subject a defendant to jurisdiction than would be necessary in the case of other kinds of business. In our case, Aluminum's consultation with its law firm

in connection with its public offering would obviously be business of an executive nature which should be given great significance in determining whether Aluminum was doing business in New York.

Aluminum also conducted other business of an executive nature in New York in the sense that it obtained from its parent corporation various corporate services including general management, financial, industrial relations and other administrative services. These services were of such a substantial nature that during 1971 Aluminum paid Corporation about $1,330,000 for these services and, during 1970, about $232,500 for these services. (JA72,18) Aluminum's employees undoubtedly came into New York in connection with these services during 1970 and 1971. (There is no specific evidence of these trips; however, there is evidence that such trips took place with respect to similar services performed in 1972 and 1973.) (JA47) That a defendant who avails himself of services in New York (as opposed to providing services or selling goods within the State) may be subjected to New York's jurisdiction has been made clear by Sterling Nov. Corp. v. Frank & Hirsch D. Co., 299 N.Y. 208 (1949). There, the defendant was a foreign

corporation not qualified to do business in New York, without any office in New York. However, it used a New York buying office which was a separate corporation. This buying office represented no other companies except for a company related to the defendant. The Court held that the activities of the buying office in purchasing goods for the foregin defendant were sufficient to subject that defendant to jurisdiction.

Our case is stronger than the Sterling case because the services performed for Aluminum were performed by its parent rather than by an unrelated corporation.

The Court below rejected the evidence of the services Corporation performed for Aluminum on the grounds that it was not shown that the parent controlled the subsidiary (citing Delagi).

However, there is no need to show control in our case. Aluminum would be subject to New York's jurisdiction based on its activities in obtaining management services from Corporation rather than because Corporation's activities are being considered the activities of Aluminum. Consequently our case is distinguishable from Delagi because there the plaintiffs claimed that because of the activities of the New York wholesaler and its

dealers in New York the parent should be subjected to New York jurisdiction. Our case is similarly distinguishable from Public Administrator of County of N. Y. v. Royal Bank of Canada, 19 N. Y. 2d 127 (1967), where control was at issue because the plaintiff claimed jurisdiction over the foreign subsidiary based on the activities of its parent in New York.

To summarize, the conclusion of the lower Court that Aluminum was not subject to New York's jurisdiction is surprising, to say the least, when we consider Aluminum's activities in New York, directly and in connection with its sibsidiary and its parent, both of which are subject to New York's jurisdiction and its large amount of sales into New York. It should also be noted, as described above (Brief, p. 6) that Aluminum's and Corporation's financial statements show a close interrelationship among Aluminum, Sales and Corporation. There comes a point at which a company becomes so large that it should have difficulty avoiding jurisdiction in any State. We believe Aluminum has reached that point. In considering whether Aluminum is doing business in New York all of the activities described above should be considered together so that even if any one of those activities is insufficient to subject Aluminum to jurisdiction, if all of them amount to doing business, then jurisdiction should

be allowed. (Golding Bros. Inc. v. Overnite Transportation Co., 214 Va. 270, 199 S.E. 2d 676, 679 (1973); applying New York law.)

## CONCLUSION

For the above stated reasons the judgment of the Court below dismissing the action with respect to defendant, Harvey Aluminum (Incorporated), should be reversed on the grounds that, as a matter of law, a New York Court has jurisdiction over that defendant.

Respectfully submitted,

JULIEN & SCHLESINGER, P. C.

Attorneys for Plaintiffs-Appellants.

ALFRED S. JULIEN
JESSE ALAN EPSTEIN

Of Counsel

A 202 Affidavit of Personal Service of Papers H LUTZ APPELLATE PRINTERS INC.

US COURT OF APPEALS: SECOND CIRCUIT

Index No.

BAIRD, et al,
Plaintiff-Appellants,

against

DAY, et al,
Defendants-

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, James Steele, being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

250 West 146th Street, New York, New York

That on the 4th day of November 19 74 at 140 Broadway, New York

deponent served the annexed Appellants-Brief upon

Dewey, Ballantine, Bushby, Palmer & Wood, Esqs.

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

James Steele

Print name beneath signature

JAMES STEELE

Sworn to before me, this 4th day of November 19 74